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Order 2001-6-13



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 18<sup>th</sup> day of June, 2001

**Trans World Airlines, Inc.**

**Served June 18, 2001**

**Violations of 49 U.S.C. 41720 (formerly 41716)  
and 49 U.S.C. 41712**

**CONSENT ORDER**

This order concerns violations by Trans World Airlines, Inc. (Trans World) of 49 U.S.C. 41720 (formerly 49 U.S.C. 41716). This consent order directs Trans World to cease and desist from further violations of that statute and to pay a compromise civil penalty.

Pursuant to 49 U.S.C. 41720, major carriers desiring to enter into certain types of joint venture agreements, including a frequent flyer program agreement, must submit such agreement to the Department for review at least 30 days before the agreement may take effect. The purpose of the required submission is to permit the Department an opportunity, prior to a joint venture agreement being implemented, to determine whether the agreement presents competitive issues or other issues requiring further investigation.

America West and Trans World entered into an agreement permitting participation by each carrier's own frequent flyer program members in the other's frequent flyer program. The stated effective date of the agreement was March 15, 2000, at which time it was publicly announced and held out on each carrier's Internet site. However, the carriers failed to submit the agreement to the Department as required by 49 U.S.C. 41720 until March 24, 2000.

By failing to submit the frequent flyer participation agreement to the Department for review at least 30 days prior to its becoming effective, America West and Trans World violated 49 U.S.C. 41720. In addition, violation of that section also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712 because the two airlines could not lawfully provide the advertised benefits created by the agreement.

In mitigation, Trans World states that its failure to timely file the frequent flyer agreement was inadvertent. Trans World believed that America West and its counsel were handling all regulatory approvals and only learned of the omission after a public announcement was made and Trans World received advice of regulatory

counsel that submission of the agreement for review was required. Trans World immediately (1) notified America West and its counsel of the failure to file the agreement; (2) notified the Department of the inadvertent failure to file the frequent flier participation agreement; (3) took coordinated steps with America West to suspend the program; (4) took no further steps to notify club members; and (5) filed the agreement with the Department. Trans World did not take any further steps to implement the program until notified that the Department had completed its review.

We view seriously the failure by carriers to submit joint agreements to the Department for review pursuant to 49 U.S.C. 41720. After carefully considering all the facts in this case, including those set forth above by Trans World, the Office of Aviation Enforcement and Proceedings (Enforcement Office) believes that enforcement action is warranted. In order to avoid litigation, Trans World has agreed to a settlement of this matter with the Enforcement Office.<sup>1</sup> Trans World consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. 41720 and 41712 and to the assessment of \$2,500 in compromise of potential civil penalties, which shall become due on the effective date of this order, and payable according to ordering paragraph 5, below. The payment provisions of this order have been fashioned to take into account the carrier's bankruptcy proceeding, and the fact that the violations covered by this order occurred prior to the bankruptcy filing. The carrier filed for reorganization under the U.S. Bankruptcy Code on January 10, 2001, in the U.S. Bankruptcy Court for the District of Delaware. The assessment of this compromise civil penalty is accepted as a pre-petition general unsecured claim in the carrier's bankruptcy proceeding.<sup>2</sup> The Department and the Enforcement Office acknowledge that neither of them nor this order hold any of the creditors of Trans World responsible for causing any of the violations that are the subject of this order. This order and the penalty it assesses serves the public interest and represents an incentive for all carriers to submit joint agreements to the Department in compliance with 49 U.S.C. 41720.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

**ACCORDINGLY,**

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Trans World Airlines, Inc., violated 49 U.S.C. 41720 by failing to submit to the Department for review a covered joint venture agreement prior to putting such agreement into effect;
3. We find that by engaging in the conduct and violation described in Paragraph 2 above, Trans World Airlines, Inc., engaged in an unfair and deceptive practice in violation of 49 U.S.C. 41712;

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<sup>1</sup> A separate settlement arising from this incident covering similar violations by America West has been reached with that carrier. See Order 2001-6-12.

<sup>2</sup>The Department will file a general unsecured pre-petition proof of claim with the Bankruptcy Court to reflect the terms of this agreement.

4. Trans World Airlines, Inc., and all other entities owned or controlled by Trans World Airlines, Inc. and their successors and assignees, are ordered to cease and desist from further violations of 49 U.S.C. 41720 and 49 U.S.C. 41712; and

5. Trans World Airlines, Inc., is assessed a civil penalty of \$2,500 in compromise of the civil penalties that might otherwise be assessed for the violations found in Paragraphs 2 and 3 above. The assessed compromise penalty shall become due on the effective date of this order. It shall be treated as a pre-petition general unsecured claim in Trans World Airline, Inc.'s bankruptcy proceeding in the U.S. Bankruptcy Court in Delaware, and it shall be paid in accordance with the applicable provisions of the Bankruptcy Code, and the instructions of that court.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

By:

ROSALIND A. KNAPP  
Deputy General Counsel

(SEAL)

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## Attachment

(1) <b>To</b> 021030004	(2) <b>Type</b>		
(3) <b>From</b>	(4) <b>Ref.</b>	(5) <b>Amount</b>	
(6) <b>Ordering Bank and Related Data</b>			
(7/8) TREAS NYC/CTR/OST			
(9) BNF=/AC-69010005 OBI=			
(10) <b>Payor</b>			
(11)			

1. **Treasury Department Code—Provided**
2. **Type Code—To be provided by sending bank.**
3. **Sending Bank's Code—(ABA#)**
4. **Reference No.—Optional number, entered if sending bank desires to number transaction.**
5. **Amount—Include dollar sign and punctuation including cents digits.**
6. **Sending Bank Name—Telegraphic abbreviation corresponding to Item 4.**
- 7/8. **Entire line provided precisely as shown.**
9. **Entire line provided precisely as shown.**
10. **Enter name of air carrier or other payor (as shown on order).**
11. **Identify payment (maximum 80 digits). Enter order number (if any), issue date, and state "installment" or "full payment."**

**NOTE:** Questions about these instructions should be directed to Mr. Yash Parekh, Office of Budget and Policy, Accounting Division, TBP-24, Rm 9422, DOT, phone: (202) 366-5760, fax: (202) 366-7163. To ensure proper credit, notify Mr. Parekh when each payment is made.